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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 FRANCISCO GUTIERREZ,

15 Defendant.
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Case No. 14CR0502-H

PRELIMINARY ORDER
OF CRIMINAL FORFEITURE

17 WHEREAS, the United States seeks forfeiture of all right, title and interest in the
18 firearm and ammunition seized from Defendant FRANCISCO GUTIERREZ
19 ("Defendant"), pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c), as properties
20 involved in the commission of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), as charged in the
21 Indictment; and

22 WHEREAS, on or about April 30, 2015, the Defendant pled guilty before this Court
23 to the Indictment, which plea included consent to forfeiture of all firearms and ammunition
24 involved in the offense, including forfeiture of the following: **One (1) Smith and Wesson,**
25 **.357 caliber revolver, Serial No. AUD3227; three (3) rounds of ammunition found in**
26 **the revolver; and thirty-four (34) rounds of ammunition found in the apartment;** and

27 WHEREAS, on April 30, 2015, this Court accepted Defendant's guilty plea; and
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1 WHEREAS, by virtue of the facts set forth in the Plea Agreement and Forfeiture
2 Addendum, the United States has established the requisite nexus between the forfeited
3 properties and the offense; and

4 WHEREAS, by virtue of said guilty plea, the United States is now entitled to
5 possession of said properties, pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C.
6 § 2461(c); and

7 WHEREAS, pursuant to Rule 32.2(b), the United States having requested the
8 authority to take custody of the above-referenced properties which were found forfeitable
9 by the Court;

10 Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

11 1. Based upon the guilty plea of the Defendant, the United States is hereby
12 authorized to take custody and control of the firearm and ammunition, and all right, title
13 and interest of Defendant in the Smith and Wesson, .357 caliber revolver, Serial
14 No. AUD3227; three rounds of ammunition found in the revolver; and thirty-four rounds
15 of ammunition found in the apartment, which are hereby forfeited to the United States for
16 disposition in accordance with the law, subject to the provisions of 21 U.S.C. § 853(n).

17 2. The firearm and ammunition are to be held by the Federal Bureau of
18 Investigation ("FBI") in its secure custody and control.

19 3. Pursuant to Rule 32.2(b) and (c), the United States is hereby authorized to
20 begin proceedings consistent with any statutory requirements pertaining to ancillary
21 hearings and rights of third-parties. The Court shall conduct ancillary proceedings as the
22 Court deems appropriate only upon the receipt of timely third-party petitions filed with the
23 Court and served upon the United States. The Court may determine any petition without
24 the need for further hearings upon the receipt of the Government's response to any petition.
25 The Court may enter an amended order without further notice to the parties.

26 4. Pursuant to the Attorney General's authority under Section 853(n)(1) of Title
27 21, United States Code, Rule 32.2(b)(6), Fed. R. Crim. P., and Rule G(4) of the
28 Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, the

1 United States forthwith shall publish for thirty (30) consecutive days on the Government's
2 forfeiture website, www.forfeiture.gov, notice of this Order, notice of the United States'
3 intent to dispose of the properties in such manner as the Attorney General may direct, and
4 notice that any person, other than the Defendant, having or claiming a legal interest in the
5 above-listed forfeited properties must file a petition with the Court within thirty (30) days
6 of the final publication of notice or of receipt of actual notice, whichever is earlier.

7 5. This notice shall state that the petition shall be for a hearing to adjudicate the
8 validity of the petitioner's alleged interest in the property, shall be signed by the petitioner
9 under penalty of perjury, and shall set forth the nature and extent of the petitioner's right,
10 title or interest in the forfeited property and any additional facts supporting the petitioner's
11 claim and the relief sought.


12 6. The United States may also, to the extent practicable, provide direct written
13 notice to any person known to have alleged an interest in the properties that are the subject
14 of the Preliminary Order of Criminal Forfeiture.

15 7. Upon adjudication of all third-party interests, this Court will enter an
16 Amended Order of Forfeiture pursuant to 21 U.S.C. § 853(n), in which all interests will be
17 addressed.

18 8. Pursuant to Rule 32.2(b)(4), this Order of Forfeiture shall be made final as to
19 the Defendant at the time of sentencing and is part of the sentence and included in
20 the judgment.

21 IT IS SO ORDERED.

22 DATED: October 29, 2015

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25 HONORABLE MARILYN L. HUFF
26 UNITED STATES DISTRICT JUDGE
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